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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

JOHN KASPER,
Petitioner,

v.

STATE OF TENNESSEE,
Respondent.

ANSWER

To Petition for Writ of Certiorari.

GEORGE F. McCANLESS,
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State of Tennessee.

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ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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To Petition for Writ of Certiorari.

MAY IT PLEASE THE COURT:

The petitioner seeks a review by this Honorable Court of an opinion and judgment of the Supreme Court of Tennessee, dated July 27, 1959 (petition to rehear denied October 2, 1959), in the case of John Kasper v. State of Tennessee, not yet officially reported, but unofficially reported in 326 S. W. 2d 664.

JURISDICTION AND QUESTION PRESENTED.

Jurisdiction of this Honorable Court is invoked by authority of Title 28, U. S. C. A. 1257 (3).

Counsel for the State of Tennessee insists that the question presented is whether or not the common law offense of inciting to riot in the State of Tennessee is repugnant to the right of free speech and free press guaranteed by the First Amendment to the Constitution of the United States. Counsel for the petitioner admits on page 3 of the petition that this is another way of stating the issue involved, although "Under Question Presented", he states the problem for solution to be as follows:

> "Are the speeches made and printed material circulated by the petitioner which formed the basis for the charge and conviction of the common law offense of 'inciting to riot' protected under the First Amendment of the United States Constitution?"

Further, in view of the fact that none of the evidence in this cause has been designated as a basis for this petition, it is again insisted that the question involved must be whether or not the common law offense of inciting to riot in this State conflicts with the right of freedom of speech and freedom of the press.

BRIEF AND ARGUMENT.

Cases determined by this Honorable Court and cited by counsel for the petitioner answers this question contrary to the contention of the petitioner. In **Terminiella v. Chicago**, 93 L. ed. 1131, 37 U. S. 1, it was said:

> "The constitutional guaranty of free speech does not prevent the punishment for slanderous, abusive, and offensive utterances which have a tendency to breach the peace. Stromberg v. California, 283 U. S. 359, 368, 75 L. ed. 1117, 1122, 51 S. Ct. 532; Near v. Minnesota, 283 U. S. 697, 708, 711, 712, 75 L. ed. 1357, 1363, 1365, 1366, 51 S. Ct. 625 (distinguished); Thornhill v. Alabama, 310 U. S. 88, 84 L. ed. 1093, 60 S. Ct. 736; Ogren v. Rockford Star Printing Co., 288 Ill. 405, 417, 123 N. E. 587; Murdock v. Pennsylvania, 319 U. S. 105, 87 L. ed. 1292, 63 S. Ct. 870, 882, 891, 156 A. L. R. 81 (distinguished); Thomas v. Collins, 323 U. S. 516, 89 L. ed. 430, 65 S. Ct. 315 (distinguished); Cantwell v. Connecticut, 310 U. S. 296, 308, 84 L. ed. 1213, 1220, 60 S. Ct. 900, 128 A. L. R. 1352; Chaplinsky v. New Hampshire, 315 U. S. 568, 571, 86 L. ed. 1031, 1034, 62 S. Ct. 766; Chicago v. Hunt, 374 Ill. 234, 29 N. E. 2d 86."

This Honorable Court in **Stromberg v. California**, 75 L. ed. 1117, 283 U. S. 359, had this to say with respect to the right of free speech:

> "The right is not an absolute one, and the state in the exercise of its police power may punish the abuse of this freedom. There is no question but that the state may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means."

Counsel for the petitioner has not designated that the indictment in this cause be certified to this Honorable

Court, and the Tennessee Supreme Court did not in its opinion state a clear and concise definition of the offense "inciting to riot". However, it is clear from the Court's opinion and the facts recited therein that the petitioner did intend to incite his followers to riot to prevent the integration of Negro children with white children in public schools of Nashville, Tennessee, by violence and unlawful means. Considering the principles stated in the cases cited above and the facts recited in the Tennessee Supreme Court's opinion, it seems clear that the common law offense of inciting to riot in the State of Tennessee does not contravene the right of free speech as guaranteed by Amendment I, Constitution of the United States.

In view of the foregoing, it is submitted that the petitioner's prayer for a writ of certiorari in this cause should be denied.

Respectfully submitted,

GEORGE F. McCANLESS,
Attorney General,
State of Tennessee.

THOMAS E. FOX,
Assistant Attorney General,
State of Tennessee.

TEF/b

I certify that I forwarded a copy of this Answer to Petition for Writ of Certiorari to Mr. J. Benjamin Simmons, 1010 Vermont Avenue, N. W., Washington, D. C., on this, the .... day of December, 1959.

Thomas E. Fox,
Assistant Attorney General,
State of Tennessee.

TEF/b